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Supreme Court of the United States

OCTOBER TERM 1952.

CALIFORNIA TEXAS OIL COMPANY, LIMITED;
SOCONY-VACUUM OIL COMPANY, INCORPORATED,
STANDARD OIL COMPANY OF CALIFORNIA,
THE TEXAS COMPANY, and
ARABIAN AMERICAN OIL COMPANY,
Petitioners,

vs.

THE HONORABLE JAMES R. KIRKLAND, Judge of the United States District Court for the District of Columbia,
Respondent.

In re: INVESTIGATION OF WORLD ARRANGEMENTS WITH RELATION TO THE PRODUCTION, TRANSPORTATION, REFINING AND DISTRIBUTION OF PETROLEUM IN POSSIBLE VIOLATION OF TITLE 15 U. S. CODE, SECTIONS 1-23.

Petition for Writ of Certiorari.

No. 421.

Motion for Leave to File Petition for Writ of Mandamus.

Misc. No. 233.

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October 29, 1952.

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Misc. No. 233.

Petition for Writ of Certiorari to the United States Court of Appeals for the District of Columbia Circuit.

Petitioners pray that a Writ of Certiorari issue to review a judgment of the United States Court of Appeals for the District of Columbia Circuit denying a petition for a writ of mandamus to the United States District Court for the District of Columbia.

Opinions Below.

The opinions of the District Court and of the Court of Appeals are unreported (R. 172, 808).

Jurisdiction.

The judgment and orders of the Court of Appeals were entered on October 17 and 21, 1952 (R. 802, 807). The jurisdiction of this Court is invoked under 28 U. S. C., Section 1254(1).

Questions Presented.

This case involves the special constitutional status of the District of Columbia and hitherto undecided questions as to the standards for fair administration of justice in the District's criminal courts, under applicable provisions of the Constitution, the statutes and the Rules of Criminal Procedure.

The questions presented relate to a Special Grand Jury proceeding in the District of Columbia in which an indictment is sought against petitioners and other non-resident companies based on their operations in foreign countries in alleged violation of the antitrust laws.

The questions presented are:

(1) Whether the Court of Appeals improperly decided a question of general importance and improperly interpreted applicable provisions of the Constitution, statutes and Criminal Rules, by failing to require the District Court to exercise its admitted power to discharge this Special Grand Jury, "which has made no investigation yet"*, since the following facts of record clearly establish that such proceedings should not have been brought in the District of Columbia:

(a) The Department of Justice is seeking an indictment for an alleged antitrust offense in connection with petroleum operations in foreign lands over a period of twenty-five years, and the vital center in the United States of the acts claimed to constitute the alleged offense is the Southern District of New York, where most of the companies involved have their main offices and where their American executives concerned with their foreign operations are located, while none of the principal offices or executives is located in the District of Columbia.

(b) Despite the special circumstances of this case (see pages 9-12 below) which clearly make Government employees unsuitable as jurors, the Department of Justice is proceeding in a forum where Government employees regularly predominate on all juries and constitute 14 of the 23 grand jurors in this instance, instead of in a forum such as New York, where major civil jury cases also involving foreign oil operations were recently instituted by that Department and are now pending, where Government employees are barred from service as grand jurors and where the composition of the Grand Jury would not present the serious constitutional and

* Government's brief in Court of Appeals, page 17.

other questions relating to the administration of justice that are presented here.

(c) Criminal Rules 21(b) and 22 require either that the present Grand Jury proceeding or that the trial of any resulting indictment be transferred, in the interest of justice, to the Southern District of New York. A delay in relief until after indictment would cause unnecessary, unreasonable and oppressive hardship to petitioners and frustrate the purposes of the Criminal Rules.

(d) If the conduct of the petitioners constitutes the offense charged by the Department of Justice, that offense has been committed within New York and other States, and not solely within the District of Columbia, so that the Department's election to seek an indictment in the District of Columbia, rather than in a State, would unnecessarily raise a serious constitutional question as to the validity of the proceedings under Article III, Section 2, clause 3, and the Sixth Amendment of the Constitution.

(e) Under the circumstances of this case, irreparable injury would follow from the conduct of the proceedings of this Special Grand Jury in the District of Columbia, whether or not a resulting indictment were dismissed as invalid or transferred elsewhere for trial.

(2) Whether the Courts below failed to give proper effect to applicable decisions of this Court in holding that Government employees are constitutionally suitable as Grand Jurors in a case such as this despite the extraordinary circumstances of Government interest shown by the present record.

(3) Whether the Courts below improperly decided important questions of federal criminal law which have not been, but should be, settled by this Court, by construing

the Criminal Rules as not authorizing the transfer or dismissal of criminal proceedings before indictment under any circumstances whatsoever short of "absolute certainty of invalidity" of the proceedings.

(4) Whether the Court of Appeals improperly construed a decision of this Court as having considered and determined the question raised below as to whether an offense committed within one or more States, and not solely within the District of Columbia, is triable in the District of Columbia under Article III, Section 2, Clause 3 of the Constitution as an offense "not committed within any State."

(5) Whether the courts below improperly decided an important question of federal law which has not been, but should be, settled by this Court, by holding that petitioners are premature in seeking relief before the return of an indictment, and by refusing to prevent unnecessary, unreasonable, and oppressive hardship and expense and other irreparable injuries to petitioners, thus effectively depriving petitioners of any relief for such injuries resulting from the grand jury phase of this prosecution.

Constitutional Provisions Involved.

The pertinent constitutional provisions are Article III, Section 2, clause 3, and Amendments V and VI, reprinted in the Appendix.

Statutes Involved.

The pertinent statutory provisions are Sections 11-1408 and 1420 of the District of Columbia Code (1951), 18 U. S. C., Section 3771 (1946 Ed., Supp. IV, 1951) and Rules 1, 2, 6(a) and (g), 21(b), 22, and 54 of the Federal Rules of Criminal Procedure thereunder, reprinted in the Appendix.

Statement.

1. On July 17, 1952, the Attorney General announced publicly that a Grand Jury investigation would be conducted in the District of Columbia to inquire into charges that an international cartel controlled the world's oil market. The Attorney General stated that he would seek an indictment of certain named companies (R. 87). Three of the petitioners were among the companies named, while the other two petitioners are affiliates of some of the named petitioners.

2. On or about August 5, 1952, petitioners were served with subpoenas *duces tecum* commanding them to appear and produce millions of documents, comprising substantially all their records relating to foreign operations for the past twenty-five years, before "the Grand Jury of" the United States District Court for the District of Columbia (R. 19). The caption of the subpoena read: "Investigation of World Arrangements with relation to the Production, Transportation, Refining and Distribution of Petroleum in Possible Violation of Title 15 U. S. C., Sections 1-23." At that time, the Grand Jury did not exist. Thereafter, on September 2, 1952, the District Court convened a "special" Grand Jury in the District of Columbia, pursuant to a written request by the United States Attorney, for the specific purpose of conducting an investigation by the Department of Justice into "possible monopoly by certain oil companies" (R. 27).

3. Petitioners filed various motions in the District Court seeking an order, pursuant to the inherent power of the Court and the provisions of Rules 6, 21(b) and 22 of the

Federal Rules of Criminal Procedure, dismissing the Special Grand Jury, or in the alternative transferring the proceedings to the Southern District of New York (R. 35, 79, 89, 126, 142).*

4. The subject matter of the proceeding before the Special Grand Jury was described by the Special Assistant Attorney General in an affidavit to the Court below as follows:

> "This investigation relates exclusively to petroleum operations in foreign lands on the part of the United States and foreign corporations" (Emphasis added) (R. 160).**

The Grand Jury proceeding arose out of a lengthy *ex parte* staff report to the Federal Trade Commission as to petroleum operations of two foreign companies and five American companies and their subsidiaries and affiliates in the production of crude oil and petroleum products in foreign lands (R. 58). The report is entitled "The International Petroleum Cartel" (R. 45). The Attorney General stated in his announcement of July 17, 1952, that this report on the alleged oil cartel would be made available to the Grand Jury (R. 58). The two foreign companies and the five American companies which the Attorney General named as targets of the proceeding were also named in the staff report to the Federal Trade Commission as the participants in the alleged international oil cartel (R. 87). The prosecutor stated below that the inquiry is directed toward establishing a continuing offense of conspiracy to monopolize

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* Counsel for other companies indicated below that in order to avoid duplication they had not formally joined in these motions but that they believed them to be well founded (R. 443-455).

** See also R. 19, 27, 57, 60, 115, 154, 160-1, 188, 189, 197, 234, 236, 376-7, 379, 389-90, 404-8, 410, 427-8, 432, 434, 515, 529-30.

and monopolization of petroleum operations in foreign lands over a period of nearly twenty-five years (R. 379, 389, 390, 404-8, 432, 515). In attempting to document this charge, the prosecutor read to the court from the report of the staff of the Federal Trade Commission (R. 405-7).*

5. The prosecutor asserted that certain overt acts in furtherance of this alleged conspiracy were committed in the District of Columbia (R. 407-8). However, the record establishes that wherever the alleged offense may have begun and wherever overt acts may have carried it, the vital center in the United States of the activities constituting that alleged continuing offense was in the Southern District of New York and that acts claimed by the Government to be fundamental in the alleged continuing conspiracy and monopolization occurred in that district (R. 136-141). In that district most of these companies have their principal offices and their American executives concerned with their foreign operations. At these offices most of the subpoenas were served (R. 39, 575, 604, 679, 699, 732). None of these companies has its principal office or executives in the District of Columbia. Literally millions of the documents in the United States called for by the subpoenas are located outside the District of Columbia, and principally in the Southern District of New York. Additional millions are located abroad but must be brought to New York for review and in many cases for translation. The legal departments and general counsel of the petitioners are located outside the District of Columbia and for the most part in New York (R. 83, 97, 129-130).

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* The report which had been written sometime ago (Report p. v) was printed for and published by the Select Committee on Small Business, 82nd Congress, 2nd Session, Comm. Print No. 6, Aug. 22, 1952.

6. Production of the subpoenaed documents before a Grand Jury in the District of Columbia would require the petitioners to duplicate within the District of Columbia facilities which they now maintain at their headquarters in New York or in other districts for the processing and examination of such documents, as well as to reproduce additional sets of the documents for use in the District of Columbia. For these reasons, the burden and expense of producing the documents before a Grand Jury in the District of Columbia are substantially greater than the burden and expense of producing the same documents before a Grand Jury in the Southern District of New York (R. 97).*

7. On or about August 22, 1952, the Department of Justice instituted civil proceedings in the Southern District of New York against five of the companies who were served with Grand Jury subpoenas in this proceeding, including four of the petitioners here (R. 534, 548, 560). In those actions, the Government is seeking some $67,000,000 for alleged overcharges in the sale of Middle East crude oil (R. 98-99). The civil proceedings in New York attack the respective prices charged by various companies in sales of Middle East crude oil in countries participating in the Mutual Security Program, a subject matter which is also discussed extensively in the Staff Report to the Federal Trade Commission to be submitted to the Special Grand Jury sitting in the District of Columbia (R. 50). A large number of the documents required in connection with the New York proceeding are also demanded by the subpoena returnable before the Special Grand Jury in the District of Columbia (R. 84, 100, 132).

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* The cost to one petitioner alone of reproducing an additional set of the documents covered by the subpoena would be approximately $262,500 (R. 123-4).

8. The prosecutor asserted below that this matter was of great importance to the national security of the United States (R. 189). He stressed his intention of consulting Cabinet officials during the course of the Special Grand Jury proceedings, including the Secretary of State, the Secretary of Commerce, and the Secretary of the Interior (R. 197). He cited as an overt act the alleged submission by certain companies of bids to an agency of the Department of Defense (R. 408). Finally, he stated that in contrast to the ordinary case where the prosecutor speaks for a single Department, he speaks in this case for the Executive Branch (R. 483), and for "the United States as a whole" (R. 372).

9. The record below also discloses vast areas to be covered by the Special Grand Jury inquiry where the United States Government played an important part in the actions now claimed to be illegal. The above mentioned staff report to the Federal Trade Commission itself contains a great many references* to Government knowledge and participation; various Government officials, including the Secretaries of State, War, Navy, Interior or Commerce, are stated to have either recommended or assisted, or been informed of, activities of the companies under subpoena.

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* Report p. 40, f.n. 18 on p. 40, p. 51, p. 51, f.n. 24 on p. 51, p. 52, p. 52, p. 52, p. 53, p. 54, p. 62, f.n. 69 on p. 62, f.n. 73 on p. 64, f.n. 14 on p. 73, f.n. 77 on p. 104 and f.n. 86 on p. 105, p. 110, f.n. 53 on p. 121, p. 122 and f.ns. 56 and 57 on p. 122, p. 128 and f.n. 8 on p. 128, pp. 130-131, f.n. 22 on p. 132, p. 169, p. 169, p. 169, p. 211, p. 211, p. 211 and f.n. 44 on p. 211, p. 212, p. 213, p. 214, pp. 214-215, p. 217 and f.n. 70 on p. 217, p. 219, p. 220, p. 224, p. 224, f.n. 83 on p. 224, pp. 226-227, p. 229 and f.n. 98 on p. 229, p. 235 and f.n. 32 on p. 235, p. 250, p. 253 and f.n. 10 on p. 253, p. 270, p. 272, p. 279 and f.n. 10 on p. 279, f.n. 11 on p. 354, p. 358, p. 364 and f.n. 43 on p. 364, p. 366 and f.n. 52 on p. 366.

10. Thus, in a matter where (a) the Department of Justice has concluded and announced prior to Grand Jury proceedings and the examination of evidence to be submitted by the companies involved therein that an indictment will be sought, (b) it is asserted that the United States as a whole and various Government agencies as well are directly interested, (c) it is probable that various Government agencies will provide evidence, and (d) there is need to evaluate the significance of Government participation in determining the responsibility for relationships now claimed to constitute an illegal foreign cartel, the prosecutor elected to proceed in the one forum where Government employees regularly predominate on juries. Fourteen of the members of the District of Columbia Grand Jury convened in this proceeding are Government employees (R. 71-75); eight of them are employed by the Departments of State, Commerce, Defense, Army and Navy (R. 71-75).* In contrast, Government counsel could have selected the Southern District of New York, where Government employees are barred from service on Grand Juries, or other Federal districts where Federal employees are not numerous (R. 54).

11. Because of the special circumstances of their business abroad, the return of an indictment in this proceeding may well place in serious jeopardy the arrangements under which petitioners conduct their foreign operations. The subject matter of the Special Grand Jury proceeding involves important international relationships in highly

*A ninth is employed by the General Accounting Office, an agency not unconcerned with the matters to be investigated (such as the submission of bids to an agency of the Department of Defense, R. 408) or with the $67,000,000 civil suits in New York.

sensitive areas of the world. The mere institution of these proceedings has already caused adverse criticism of petitioners in the foreign press and radio, particularly in Middle East and South American countries (R. 775-6, 782). In these areas, this matter is already the subject of propaganda adverse to petitioners in the conduct of their business abroad (R. 782). Moreover, the proceedings have already become the subject of serious concern to at least one foreign government with which all of the petitioners have important direct or indirect business relationships (R. 644, 722). These facts emphasize the vital importance to petitioners of having the question of indictment determined by a fair and impartial jury, free of the inevitable bias of Government-employed jurors in the special circumstances of this case.

12. On the basis of these facts, petitioners moved the District Court to dismiss the Grand Jury without prejudice to the institution of new proceedings or to transfer the proceedings to a proper forum. On October 6, 1952 the District Court denied these motions, for the reasons stated in its opinion (R. 172) and accompanying remarks appearing at R. 497-503.

13. Petitioners thereupon filed in the United States Court of Appeals for the District of Columbia Circuit a Petition for Leave to File a Petition for Writ of Mandamus or other appropriate relief, seeking review of the action of the District Court in denying the motions. On October 17, 1952, the Court of Appeals granted the petition for leave to file but denied the petition for a writ of mandamus, for the reasons stated in its opinion issued on October 21, 1952 (R. 802, 808).

REASONS FOR GRANTING THE WRIT.

(1) The public interest and the effective functioning of the Federal judicial system demand that the substantial issues presented here be authoritatively determined by this Court now.

This proceeding involves the legality of "world arrangements" in the petroleum industry over the past quarter of a century (R. 379). The magnitude and scope of the proceeding make it the classic example of the "big case" which requires the special judicial treatment described in the Report, *Judicial Conference of the United States*, September 26, 1951, on "Procedure in Antitrust and Other Protracted Cases". The public importance and sheer magnitude of this case are sufficient in themselves to warrant immediate review by this Court of the decisions below. They also serve to emphasize the novel issues of criminal and constitutional law which are presented.

These novel issues are of fundamental importance in the administration of Federal criminal justice, the supervision of Grand Jury proceedings and the handling of antitrust cases, particularly in the courts of the District of Columbia. They should be determined by this Court at the threshold of this proceeding in order: (1) to hold to the unavoidable minimum the burden which this case casts upon the judicial system, by avoiding the expense and delay of false starts and preliminary errors which might vitiate or render futile the entire Grand Jury phase of the proceedings; (2) to prevent the frustration of the constitutional and statutory provisions relating to the determination of a proper forum for conducting criminal proceedings.

The reasons why this case should be reviewed at this time are much more compelling than those which prompted this Court to grant extraordinary review at a preliminary

stage by the common law writ of certiorari in *U. S. Alkali Export Ass'n., Inc. et al.* v. *United States,* 325 U. S. 196, 203-204 (1945), and *De Beers Consolidated Mines, Ltd. et al.* v. *United States,* 325 U. S. 212 (1945). Both of these cases were antitrust proceedings of far less complexity, significance and scope than this proceeding.

At the outset of this large and important case the issues as to the propriety of proceedings in the District of Columbia are peculiarly fit for resolution by this Court "as overseer of the proper functioning of the Federal judicial system"* and as the "supervisory authority over the administration of criminal justice in the Federal Courts." *McNabb* v. *United States,* 318 U. S. 332, 341 (1943); *Ballard* v. *United States,* 329 U. S. 187, 189 (1946); *Sealfon* v. *United States,* 332 U. S. 575, 578 (1948).

In the exercise of their supervisory functions over Grand Juries, which are arms of the courts, the courts have long recognized their right and duty to correct misuse of the grand jury. See *Hale* v. *Henkel,* 201 U. S. 43 (1906); *United States* v. *Smyth,* 104 F. Supp. 283-292 (N. D. Calif. 1952). This power was exercised to prevent the misuse of a grand jury by the Department of Justice in a particular forum in the case of *In re National Window Glass Workers,* 287 F. 219, 225 (N. D. Ohio, 1922).

The Court of Appeals and the District Court recognized the clear power to discharge a Grand Jury. But the Courts below failed either to consider or to give proper weight to the cumulative circumstances which constitute a misuse of the Special Grand Jury in this case. As we shall show

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* Robertson and Kirkham, *Jurisdiction of the Supreme Court of the United States by Richard F. Wolfson and Richard P. Kurland* (1951) 699 and cases there cited; *Gulf Oil Corporation* v. *Gilbert,* 330 U. S. 501 (1947); *Thiel* v. *Southern Pacific Co.,* 328 U. S. 217, 221, 225 (1946).

below, the Attorney General's selection of the District of Columbia forum for the conduct of these Grand Jury proceedings, when it was unfair, burdensome and unnecessary to do so, was a misuse of the Court's power to convene special Grand Juries in the public interest.

(2) It is improper and unfair to proceed under circumstances as are here present in a forum where the Grand Jury is bound to contain a majority of Government employees, as is true of the Special Grand Jury in this case.

The statutory rule that Government employees may serve as jurors in the District of Columbia, even where the Government is a party, is a rule of necessity adopted after this Court had held that the practice was forbidden by the applicable common law. *Crawford* v. *United States,* 212 U. S. 183 (1909). The statute has been approved as constitutional by this Court, but over strong dissent, and only as applied to carefully limited circumstances not present here.* The perils to fair criminal justice are obvious, and this Court, while upholding the use of Government employees in the cases which have come before it, has so far been careful not to approve the validity of an indictment or a conviction in a matter involving vital Govern-

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* See *United States* v. *Wood,* 299 U. S. 123 (1936); *Frazier* v. *United States,* 335 U. S. 497 (1948); *Dennis* v. *United States,* 339 U. S. 162 (1950). In the *Frazier* case (involving a narcotics violation), the Court specifically refused to consider the question suggested by the presence on the jury of two employees of a Department directly interested. These cases involved Petit Juries, but under *Cassell* v. *Texas,* 339 U. S. 282 (1950) and *May* v. *United States,* 175 F. 2d 994 (D. C. Cir. 1949) the same requirement of impartiality necessarily applies to Grand Juries, as both Courts below apparently recognized. Petitioners do not believe that an impartial grand jury would return an indictment. But be that as it may, petitioners' right to an impartial grand jury is not dependent on a showing that an impartial grand jury would not indict. See *Cassell* v. *Texas, supra.*

ment interests and participation by a jury containing employees of governmental departments directly concerned with the subject matter of the prosecution.

The asserted interests of the Federal Government in this case are not merely the enforcement of the Antitrust laws and the national security, as already noted, but are also monetary. In the civil cases now pending in New York the Government claims to be a creditor of the oil companies to the extent of $67,000,000. The claim is discussed at length in the staff report to the Federal Trade Commission, which the prosecutor proposes to place before the Grand Jury* (R. 58).

The District Judge held that he was precluded by the decisions of this Court in *United States* v. *Wood, supra, Frazier* v. *United States, supra,* and *Dennis* v. *United States, supra,* from considering the fact of Government employment as a reason to bar grand jurors under any circumstances. This holding is contrary to the law as enunciated by the concurring Justice whose vote completed the majority in the latest decision of this Court on the subject:

> "* * * Government employees may be barred for implied bias when circumstances are properly brought to the Court's attention which convince the Court that Government employees would not be suitable jurors in a particular case." (See Mr. Justice Reed concurring in *Dennis* v. *United States, supra* at 172-3).

The Court of Appeals held that Government employees are suitable jurors "in respect of the subject matter of this proceeding" unless proof to the contrary is submit-

* Similarly, the prosecutor has stated that he proposes to present evidence as to the prices at which petroleum products were offered for sale to the United States Government in pursuance of the alleged conspiracy (R. 408).

ted to the District Court. However, the Court of Appeals appears to have ignored the fact that evidence on this point had already been presented to the District Court. This evidence showed that "circumstances" are clearly present here sufficient to convince a Court that Government employees are not "suitable jurors in [this] particular case." The Government employees on the Grand Jury will be asked to indict on charges, said to be presented on behalf of the entire Executive Branch and to have a vital bearing on the security and financial interests of the Government, on the basis of evidence to be presented in part by the Government agencies which they serve, and relating to activities in which their employer was an important participant. Obviously, under such circumstances, they will lack the impartiality of private jurors and indeed even of Government jurors sitting in a routine criminal case.

It thus appears that the District Court received evidence establishing that Government employees are not suitable grand jurors in this case, but regarded itself as prevented from considering this evidence by the opinions of the Supreme Court in the *Wood, Frazier* and *Dennis* cases. The Court of Appeals held that evidence of bias could be considered under the opinions of these cases, but ruled that any such evidence was to be considered by the District Court. The result is that neither the Court of Appeals nor the District Court has considered the evidence of bias which already is in the record and which should be considered under the applicable decisions of this Court.

When the District judge does consider the evidence in the record, he should grant the relief requested by petitioners whether or not he finds sufficient evidence of probable implied bias to discharge the Government employees on the Grand Jury. Even if the Government employees on the Jury are not chargeable with implied bias in the

constitutional sense, they are obviously less likely to be completely impartial in the circumstances of this case than ordinary private citizens. For this reason, the District of Columbia forum is plainly less fair to the accused than some other forum equally available to the prosecutor.* It is, therefore, a patent misuse of the Court's power to call special grand juries for the Department of Justice to institute these proceedings in the District, and such a misuse is a proper and mandatory ground for dismissal of the Special Grand Jury.** This is particularly so where, as in this case, a failure to dismiss the present Grand Jury would eventually require decision of a grave constitutional question as to the composition of the present Grand Jury that might have been avoided, and, if the Grand Jury should be later held to be constitutionally defective, large amounts of public and private time and money would have been wasted.

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* In New York, for example, Federal employees are prohibited by statute from serving on Grand Juries in the State courts sitting in New York City (N. Y. JUDICIARY LAW §598), and are therefore prohibited from serving on Grand Juries in the Federal Court for the Southern District of New York (28 U. S. C. Section 1861(4)). The practice of the United States District Court for the Southern District of New York is not to call Federal employees for jury service either on Grand *or* on Petit Juries (R. 114).

** The Court of Appeals construed all the motions below as seeking to avoid "not a Government-employee-ridden jury, but a District of Columbia jury" (R. 810). This construction was made despite the fact that two motions (R. 35, 89) sought dismissal of the present Grand Jury without prejudice to new proceedings in the District of Columbia or elsewhere, and despite the additional prayer of the motions of three petitioners for "such other and further relief as to this Court may seem proper" (R. 36, 90, 145). The courts below were therefore requested, among other things, to grant relief directed to this Government-dominated Grand Jury alone, and they erroneously refused to do so. In any event an objection to any normal District of Columbia jury would appear to be well-founded in the circumstances of this case since, as this Court noted in *Frazier* v. *United States, supra*, 335 U. S. at 508, fn. 17, Government employees constitute almost half of the persons eligible for jury service in the District of Columbia and are bound to appear in substantial numbers on any jury in the District.

(3) The letter and spirit of the Criminal Rules require that either the present proceedings or any resulting indictment be transferred in the interest of justice to the Southern District of New York.

The opinion of the District Judge states that he was "impressed with the apparent hardship" to petitioners resulting from Grand Jury proceedings in the District of Columbia, rather than in the Southern District of New York. However, he ruled that his "concern for the calamity indicated must stop at the stages of sympathy" because of his view that the Federal Rules of Criminal Procedure did not permit him to grant any relief before indictment despite the burden that the District of Columbia forum already places on petitioners (R. 175) and notwithstanding that the record already shows the existence of circumstances which would justify a transfer "in the interest of justice" after an indictment had been returned.* See *United States* v. *National City Lines*, 7 F. R. D. 393 (S. D. Cal. 1947).

The Court of Appeals never reached the question whether the District Court had power to grant any relief before indictment but indicated that if the power exists the question whether to grant relief was solely within the discretion of the District Court (R. 811-812).**

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* The District Judge in this case commented: "* * * I think that counsel for the Government should serious[ly] consider, in the words of that famous old quotation, what shall it profit the Department of Justice that it gain an indictment in the District of Columbia if it shall be required to later go back to the Southern District of New York or Northern District of California to try its case." (R. 497-8).

** The Court of Appeals held that it would compel action by the District Court only if there was "absolute certainty of invalidity" of the Grand Jury proceedings (R. 812). If this holding was intended to apply to Rule 21 (b), it would improperly limit the scope of the Rule to the control of proceedings which are *invalid* (because no indictment triable in the district could be returned) whereas the purpose of the rule was clearly to provide for the control of *valid* proceedings involving offenses triable in more than one district.

The opinions of the courts below can fairly be read to mean that the District Judge would have granted some relief if he had believed he had the power to do so, and that the Court of Appeals would have regarded any such action as a proper exercise of the District Court's discretion. This Court should therefore determine whether the Federal Rules of Criminal Procedure or the inherent power of the Court authorized the granting of relief at this stage, so that the District Judge can exercise his discretion accordingly.

The effectuation of the spirit and purpose of the transfer rules (21(b) and 22) is of the utmost importance in the fair and expeditious administration of criminal justice. An avowed purpose of these rules was to counteract the demonstrated tendency of the Government to abuse its choice of venue in conspiracy cases, particularly criminal antitrust cases, by selecting a forum other than the residence or main offices of the accused and the site of the major events constituting the alleged crime, thus placing the Government in a "preferential position"* and unreasonably and oppressively multiplying the difficulties of defense.**

In a criminal antitrust proceeding, the Department of Justice frequently begins, as it did in this case, by issuing subpoenas which require the potential defendants to pro-

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* *United States* v. *DuPont de Nemours*, 83 F. Supp. 233 (D. D. C. 1949).

** *United States* v. *Socony-Vacuum Oil Company, Incorporated*, 310 U. S. 165 (1939); Dession, *New Rules of Criminal Procedure II*, 56 YALE L. J. 197, 224 (1947); Note, 58 YALE L. J. 482 (1949). This Court's reservation on the applicability of Rule 21(b) to antitrust proceedings, expressed in *United States* v. *National City Lines*, 334 U. S. 573 (1948) was improperly followed by the District Court herein. This reservation can no longer apply since Congress has changed the rule of that case as to civil antitrust proceedings by enacting Section 1404(a). See *United States* v. *National City Lines*, 337 U. S. 78 (1949).

duce virtually all their books and records before the Grand Jury. The decisions of the Courts below make it possible for the Department to continue to select a burdensome forum, compel potential defendants to appear as witnesses before a Grand Jury in that forum, compel the shipment of millions of documents to the Grand Jury in the distant forum, and greatly increase the burden on the potential defendants. The relief intended by the rules ought not to be placed beyond reach until after a large part of the irreparable damage which they were designed to prevent has already been suffered.*

The Courts below erred in refusing to grant the relief requested.

Rule 2 requires that all rules

> "* * * shall be construed to secure simplicity in procedure, fairness in administration and the elimination of unjustifiable expense and delay."

Rule 22 specifically states that a motion to transfer may be made

> "* * * at or before arraignment or *at such other time as the court or these rules may prescribe*" (emphasis supplied.)

Even if Rules 21(b) and 22 are construed so as not to permit the "transfer of criminal proceedings"** before

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* Rule 21(b) should not be read to forbid relief when the record proves that the offense was committed in more than one district, merely because this proof does not happen to be contained in an "indictment, information or bill of particulars". In any event the staff report to the Federal Trade Commission is in substance a bill of particulars here. See *Moens* v. *United States*, 267 Fed. 317 (D. C. Cir. 1920).

** Both the Congress and the Supreme Court have recognized a grand jury investigation as a "proceeding" or "proceedings". 5 U. S. C. Section 310; *Hale* v. *Henkel*, 201 U. S. 43 (1906). And Criminal Rule 1 states that the Rules shall apply to all criminal "proceedings" except those specified in Rule 54 (which Rule does not exclude grand jury proceedings).

indictment, it was within the inherent power and it was the clear duty of the District Court to grant the alternative relief sought. The Court should have dismissed the Grand Jury proceeding, without prejudice to institution of similar proceedings in a proper forum, since it is clear from the record that the proceedings would ultimately have to be transferred in the interest of justice,* and that a delay of relief until after indictment is unfair and will cause serious hardship to petitioners.

(4) The return of any indictment by the present Grand Jury would unnecessarily raise substantial constitutional questions under Article III and the Sixth Amendment, which can and should be avoided by proceeding in a proper forum.

Article III, Section 2, Clause 3 of the Constitution of the United States provides:

> "The Trial of All Crimes, except in Cases of Impeachment, shall be by Jury; and such Trial shall be held in the State where the said Crimes shall have been committed; but *when not committed within any State,* the Trial shall be at such Place or Places as the Congress may by Law have directed." (Emphasis added.)

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*Despite the observations of the Court of Appeals below (R. 812), the number of antitrust matters pending in the United States District Court for the Southern District of New York would appear to have no real relevance, as the District judge correctly indicated (R. 263-4). The New York court itself has recognized this in refusing to transfer antitrust proceedings which properly belong in that district. *Ferguson* v. *Ford*, 77 F. Supp. 425 (S. D. N. Y. 1948), 89 F. Supp. 45 (S. D. N. Y. 1950), aff'd *sub nom. Ford Motor Co.* v. *Ryan*, 182 F. 2d 329 (2nd Cir. 1950), *cert. denied* 340 U. S. 851 (1950). Indeed, the Senior Judge of that Court has urged vigorously that the solution to the problem of that district is not less business but more judges, and for that purpose the appointment of additional Judges has already been recommended (R. 160). Moreover, the Department of Justice itself chose in August 1952 to file in that district three large civil cases against various of the oil companies (R. 534, 548, 560).

Those provisions were further refined by the requirement of the Sixth Amendment that the accused shall be tried "by an impartial jury of the State and district wherein the crime shall have been committed, * * *".

The Special Grand Jury was convened for a special purpose: "conducting [an] investigatio[n] by the Department of Justice . . . concerning possible monopoly by certain oil companies." (R. 27). It is not a regular Grand Jury, and it is not proceeding on its own initiative. Even though no indictment has been returned, it is already clear from the Special Grand Jury's terms of reference and the remainder of the record that an antitrust indictment for alleged conspiracy and monopolization of petroleum operations in foreign lands is the objective of this inquiry. (See pages 7-8 above) This continuing offense* is charged to have begun in Achnacarry Castle in Scotland in 1928 and to have continued down to the present time (R. 379, 389-90, 404-8, 432, 515).

Wherever this alleged continuing conspiracy and monopolization began, if ever, or wherever pursued by overt acts in other jurisdictions, it is shown to have existed, if anywhere, in the State of New York (R. 389), the vital center in the United States of the conduct now complained of by the Attorney General. (See page 8 above) If this alleged offense was committed at all, it was committed in a State. Article III therefore requires that it be tried in a State. The District of Columbia is not a State within the meaning of Article III.**

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* The nature of such an offense was analyzed by this Court in *United States* v. *Kissell and Harned*, 218 U. S. 601 (1910).

** *Hepburn* v. *Ellzey*, 2 Cranch 445 (U. S. 1805); *The Corporation of New Orleans* v. *Winter*, 1 Wheat. 91 (U. S. 1816); *National Mutual Insurance Co.* v. *Tidewater Transfer Co.*, 337 U. S. 582 (1949) (seven justices concurring on this point).

The Department of Justice sought to escape from the application of this constitutional provision by claiming that this continuing offense was also extended to the District of Columbia through overt acts asserted to have taken place in that District (R. 407-8). But the Department cannot thus escape from the plain language of the Constitution. Under that language it is not enough to show that this continuing but single offense may also have been committed in the District of Columbia. It is necessary under Article III that it affirmatively appear before such continuing offense can be tried *outside of a State* that it was "*not* committed within a State". (Emphasis supplied)* It therefore appears that what the Department in effect seeks is a new clause in the Constitution which would provide that when such an offense is committed both in a State and outside the State it may be tried *outside the State*. To insert such a provision would not only do violence to the language which the framers of the Constitution chose, but it would be contrary to the historical background and purpose of this Article.**

The situation in this very proceeding in which, as a result of its being brought at the central seat of Government, a majority of members of the Grand Jury are employees of the central Government, itself illustrates the wisdom of the framers of the Constitution.

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* This Court has so held. *United States* v. *Jackalow*, 1 Black 484 (U. S. 1861).

** The framers of the Constitution were determined to prevent citizens being called to a seat of central government to answer for crimes committed in a state. There was prevalent then a deeply planted feeling of distrust against the inherent dangers of the centralized powers of the Federal Government. See 3 Madison Papers 1441; 4 Elliot Debates, 2 ed. p. 154; op. cit. Vol. 2, p. 400 — Debate in the New York Convention; and Vol. 3, pp. 568-569 — Debate in the Virginia Convention. These were the reasons for Article III, Section 2, clause 3 and the Sixth Amendment.

The important safeguard of the protection of Article III may be invoked in a criminal proceeding prior to indictment. *In re Rosdeitscher*, 33 Fed. 657 (E. D. Va. 1888). It should be applied by the Court where the prosecutor's selection of an improper forum threatens to render futile the proceeding of its Grand Jury and to impose an oppressive and unnecessary burden on those against whom an indictment is sought.

So far as we have been able to discover, no litigant has heretofore presented to this Court the question of the application of Article III to the situation where an offense by its very nature can be and has been committed both within a State and within the District of Columbia. The Court of Appeals erroneously held that this question had been answered by the decision and opinion of this Court in *Hyde* v. *Shine*, 199 U. S. 62 (1905). But the indictment considered in that case charged an offense committed solely within the District of Columbia, not an offense committed within the District of Columbia *and* within a State. Close examination of the arguments of counsel and of the opinions of the Court and of the minority in that case will demonstrate that neither the issue of whether the District of Columbia is a state under Article III, nor the precise point here in question was there raised or considered.*

* That case came up on *habeas corpus* in proceedings to remove a defendant to the District of Columbia. An indictment had been offered in evidence as proof of probable cause that an unlawful conspiracy had been entered into in the District of Columbia and an overt act committed there. The Court held an indictment with these allegations sufficient to establish jurisdiction in the District of Columbia. A minority thought that evidence in the removal proceedings should have been considered which, in their opinion, would have established that there was no probable cause

It is important to the proper administration of justice, and particularly to the proper disposition of large antitrust cases such as this case, that this Court either (a) resolve this constitutional question now, rather than at a later time when proper application of the constitutional requirement would result in the waste of years of judicial and legal effort, or (b) direct the discharge of the grand jury without prejudice to the institution of new proceedings in a proper district in accordance with the usual policy of not making unnecessary decisions of constitutional questions.

If neither alternative is adopted the erroneous Court of Appeals ruling may lead or require the District Court to deny a subsequent motion to quash the indictment on this same constitutional ground. Such a ruling by the District Court, even though erroneous, might not be reviewable by this Court until after a long, burdensome and expensive trial.

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to believe that any crime whatever had been committed in the District of Columbia.

In its opinion in that case this Court rejected an argument that under a certain statute an offense could not be tried in the Supreme Court of the District of Columbia "if lawfully triable in any other court". But the opinion itself makes it clear that the reference in the Statute in question was only to *other Courts within the District of Columbia* and it also seems clear that "offense" was used in its generic sense of a particular category of crime.

It is also to be noted that not until later did this Court decide that an overt act evidences the existence of a conspiracy wherever such act is done. Nor had this Court yet given its illuminating analysis of the nature of a continuing offense of conspiracy in *United States* v. *Kissell and Harned*, 218 U. S. 601 (1910). It is in the light of these conceptions that the point is now raised that assuming the conspiracy existed both in a State and the District of Columbia it could not be tried in the latter under Article III, Section 2, Clause 3 of the Constitution because it still would not be an offense "not committed within a State".

(5) The decisions of the Court of Appeals and the District Court contravene the spirit and the policy underlying the provisions of the Constitution, the statutes, and the rules, and of the pronouncements of the courts concerning the selection of an improper forum for the prosecution of alleged offenses.

As already shown, the framers of our Constitution, by Article III, Section 2, Clause 3, and the Sixth Amendment, sought to prevent the trial of citizens from different States at the seat of government for alleged offenses committed within a State. The Congress, by the enactment of Section 1404(a) of the Judicial Code and by approval of Rules 2, 21(b), and 22 of the Rules of Criminal Procedure, recognized and sought to correct the evils attendant upon the choice of a forum that is burdensome and oppressive to defendants. This Court and its Advisory Committee by adopting the Rules of Criminal Procedure sought to meet this evil as it exists in criminal actions.

The purpose and spirit of the rules in criminal proceedings unquestionably were to discourage the Government's practice of indicting citizens in a district where they are non-resident, when it is not necessary or in the interest of justice to do so. Thus, Judge Medalie, a member of the Advisory Committee, referring to this practice in a discussion of Rule 21(b), stated:

> "*Government attorneys* cannot, if they appraise themselves properly, afford to engage in that kind of thing, and perhaps it will *diminish* the abuse, if in fact it doesn't succeed in its complete *abolition*" (emphasis supplied) (Institute Proceedings, N. Y. U. Ed. 1946, p. 275).

Moreover, this Court and other courts have consistently frowned on the prosecutor's practice of choosing unnecessarily a remote forum in which to return indictments. *Hyde* v. *Shine,* 199 U. S. 62, 78 (1905); *United States* v. *Johnson,* 323 U. S. 273, 276 (1944); *United States* v. *Erie Basin Metal Products Co.,* 79 F. Supp. 880, 886 (D. Md. 1948); *United States* v. *National City Lines,* 7 F. R. D. 393, 395, 396 (S. D. Calif. 1947).

For example, this Court in *Hyde* v. *Shine, supra,* disapproved

> "* * * the practice of *indicting* citizens of distant States in the courts of this District, where an indictment will lie in the State of the domicil of such person unless in exceptional cases where the circumstances seem to demand that this course shall be taken." (Emphasis supplied.)

In the *Erie Basin* case, *supra,* the District Court of Maryland said:

> "* * * in the interest of justice, in the public interest, in the interest of time and money-saving, and in greater fairness to all concerned, it would seem that the Department of Justice should have given more complete consideration to the question whether, in the first instance, this indictment should not have been brought in the Illinois jurisdiction."

The District Court recognized that the evil is present here (R. 497-8), but both Courts below held on strictly technical grounds that petitioners are without remedy unless and until an indictment be returned against them. That is tantamount to a holding that there is no remedy to protect them against the irreparable damages they will sustain through the Grand Jury phase of this prosecution. (See pages 8, 9 and 12 above). The remedy of dismissing

the Special Grand Jury without prejudice was urged in the Courts below. The refusal to apply it was an abuse of discretion.

The cumulative effect of all the circumstances of this case unmistakably requires the dismissal of this Special Grand Jury in the interests of orderly and fair administration of justice and to prevent a grave injustice to petitioners.

Conclusion.

For the reasons stated, the petition for writ of certiorari should be granted.

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Appendix.

Constitutional Provisions.

ARTICLE III, Section 2, Clause 3:

"The Trial of All Crimes, except in Cases of Impeachment, shall be by Jury; and such Trial shall be held in the State where the said Crimes shall have been committed; but when not committed within any State, the Trial shall be at such Place or Places as the Congress may by Law have directed."

AMENDMENT V:

"No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation."

AMENDMENT VI:

"In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor and to have the Assistance of Counsel for his defense."

Statutory Provisions.

DISTRICT OF COLUMBIA CODE, Title 11, Section 1408:

"Whenever the United States attorney for the District of Columbia shall certify in writing to the Chief Justice of the District Court of the United States for said District, or, in his absence, to the senior associate justice of said court, that the exigencies of the public service require it, said chief justice or senior associate justice may, in his discretion, order an additional grand jury summoned, which additional grand jury shall be drawn at such time as he may designate in the manner provided by law for the drawing of grand jurors in the District of Columbia, and unless sooner discharged by order of said chief justice, or, in his absence, senior associate justice, said additional grand jury shall serve during and until the end of the term in and for which it shall have been drawn."

DISTRICT OF COLUMBIA CODE, Section 11-1420:

"All executive and judicial officers of the Government of the United States and of the District of Columbia, all officers and enlisted men of the Army, Navy, Marine Corps, and Coast Guard of the United States in active service, those connected with the police and fire departments of the United States and of the District of Columbia, counselors and attorneys-at-law in actual practice, ministers of the gospel and clergymen of every denomination, practicing physicians and surgeons, keepers of hospitals, asylums, almshouses, or other charitable institutions created by or under the laws relating to the District of Columbia, captains and masters and other persons employed on vessels navigating the waters of the District of Columbia shall be exempt from jury duty, and their names shall not be placed on the jury lists.

"All other persons, otherwise qualified according to law whether employed in the service of the government of the United States or of the District of Columbia, all officers

and enlisted men of the National Guard of the District of Columbia, both active and retired, all officers and enlisted men of the Military, Naval, Marine, and Coast Guard Reserve Corps of the United States, all notaries public, all postmasters and those who are the recipients or beneficiaries of a pension or other gratuity from the Federal or District Government or who have contracts with the United States or the District of Columbia, shall be qualified to serve as jurors in the District of Columbia and shall not be exempt from such service: *Provided*, That employees of Government of the United States or of the District of Columbia in active service who are called upon to sit on juries shall not be paid for such jury service but their salary shall not be diminished during their term of service by virtue of such service, nor shall such period of service be deducted from any leave of absence authorized by law." (Mar. 3, 1901, 31 Stat. 1224, ch. 854, §217; Feb. 18, 1909, 35 Stat. 636, ch. 146, §73; Aug. 22, 1935, 49 Stat. 682, ch. 605.)

18 U. S. C., SECTION 3771 (1946 Ed., Supp. IV, 1951):

"The Supreme Court of the United States shall have the power to prescribe, from time to time, rules of pleading, practice, and procedure with respect to any or all proceedings prior to and including verdict, or finding of guilty or not guilty by the court if a jury has been waived, or plea of guilty, in criminal cases and proceedings to punish for criminal contempt of court in the United States district courts, in the district courts for the Territory of Alaska, the district of the Canal Zone and the Virgin Islands, in the Supreme Courts of Hawaii and Puerto Rico, and in proceedings before United States commissioners. Such rules shall not take effect until they have been reported to Congress by the Chief Justice at or after the beginning of a regular session thereof but not later than the first day of May, and until the expiration of ninety days after they have been thus reported. All laws in conflict with such rules shall be of no further force or effect after such rules have taken effect.

"Nothing in this title, anything therein to the contrary notwithstanding, shall in any way limit, supersede, or repeal any such rules heretofore prescribed by the Supreme Court. June 25, 1948, c. 645, 62 Stat. 846, amended May 24, 1949, c. 139, §59, 63 Stat. 98; May 10, 1950, c. 174, §1, 64 Stat. 158."

Federal Rules of Criminal Procedure.

RULE 1:

"These rules govern the procedure in the courts of the United States and before United States commissioners in all criminal proceedings, with the exceptions stated in Rule 54."

RULE 2:

"These rules are intended to provide for the just determination of every criminal proceeding. They shall be construed to secure simplicity in procedure, fairness in administration and the elimination of unjustifiable expense and delay."

RULE 6:

"(a) *Summoning Grand Juries.* The court shall order one or more grand juries to be summoned at such times as the public interest requires. The grand jury shall consist of not less than 16 nor more than 23 members. The court shall direct that a sufficient number of legally qualified persons be summoned to meet this requirement."

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"(g) *Discharge and Excuse.* A grand jury shall serve until discharged by the court but no grand jury may serve more than 18 months. The tenure and powers of a grand jury are not affected by the beginning or expiration of a term of court. At any time for cause shown the court may excuse a juror either temporarily or permanently, and in the latter event the court may impanel another person in place of the juror excused."

RULE 21(b):

"*Offense Committed in Two or More Districts or Divisions.* The Court upon motion of the defendant shall transfer the proceeding as to him to another district or division, if it appears from the indictment or information or from a bill of particulars that the offense was committed in more than one district or division and if the court is satisfied that in the interest of justice the proceeding should be transferred to another district or division in which the commission of the offense is charged."

RULE 22:

"*Time of Motion to Transfer.* A motion to transfer under these Rules may be made at or before arraignment or at such other time as the court or these rules may prescribe."

RULE 54:

"(a) *Courts and Commissioners.*

"(1) *Courts.* These rules apply to all criminal proceedings in the United States district courts, which include the District Court for the Territory of Alaska and the District Court of the Virgin Islands; in the United States courts of appeals; and in the Supreme Court of the United States. The rules governing proceedings after verdict or finding of guilt or plea of guilty apply in the United States District Court for the District of the Canal Zone.

"(2) *Commissioners.* The rules applicable to criminal proceedings before commissioners apply to similar proceedings before judges of the United States or of the District of Columbia. They do not apply to criminal proceedings before other officers empowered to commit persons charged with offenses against the United States.

"(b) *Proceedings.*

"(1) *Removed Proceedings.* These rules apply to criminal prosecutions removed to the United States district courts from state courts and govern all procedure after removal, except that dismissal by the attorney for the prosecution shall be governed by state law.

"(2) *Offenses Outside a District or State.* These rules apply to proceedings for offenses committed upon the high seas or elsewhere out of the jurisdiction of any particular state or district, except that such proceedings may be had in any district authorized by Title 18, U. S. C. A., §3238.

"(3) *Peace Bonds.* These rules do not alter the power of judges of the United States or of United States commissioners to hold to security of the peace and for good behavior under Title 18, U. S. C. A., §3043, and under Revised Statutes §4069, 50 U. S. C. A., §23, but in such cases the procedure shall conform to these rules so far as they are applicable.

"(4) *Trials before Commissioners.* These rules do not apply to proceedings before United States commissioners and in the district courts under Title 18, U. S. C. A., §§3401, 3402, relating to petty offenses on federal reservations.

"(5) *Other Proceedings.* These rules are not applicable to extradition and rendition of fugitives; forfeiture of property for violation of a statute of the United States; or the collection of fines and penalties. They do not apply to proceedings under Title 18, U. S. C. A., Chapter 403—Juvenile Delinquency—so far as they are inconsistent with that Chapter. They do not apply to summary trials for offenses against the navigation laws under Revised Statutes §§4300-4305, 33 U. S. C. A. §§391-396, or to proceedings involving disputes between seamen under Revised Statutes

§§4079-4081, as amended, 22 U. S. C. A. §§256-258, or to proceedings for fishery offenses under the Act of June 28, 1937, c. 392, 50 Stat. 325-327, 16 U. S. C. A. §§772-772i, or to proceedings against a witness in a foreign country under Title 28, U. S. C. A., §1784.

"(c) *Application of Terms.* As used in these rules the term 'State' includes District of Columbia, territory and insular possession. 'Law' includes statutes and judicial decisions. 'Act of Congress' includes any act of Congress locally applicable to and in force in the District of Columbia, in a territory or in an insular possession. 'District court' includes all district courts named in subdivision (a), paragraph (1) of this rule. 'Civil action' refers to a civil action in a district court. 'Oath' includes affirmations. 'Attorney for the government' means the attorney general, an authorized assistant of the attorney general, a United States attorney and an authorized assistant of a United States attorney. The words 'demurrer,' 'motion to quash,' 'plea in abatement,' 'plea in bar,' and 'special plea in bar,' or words to the same effect, in any act of Congress shall be construed to mean the motion raising a defense or objection provided in Rule 12. As amended Dec. 27, 1948, eff. Oct. 20, 1949."

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 1952.

CALIFORNIA TEXAS OIL COMPANY, LIMITED, SOCONY-VACUUM OIL COMPANY, INCORPORATED, STANDARD OIL COMPANY OF CALIFORNIA, THE TEXAS COMPANY, and ARABIAN AMERICAN OIL COMPANY, Petitioners, *vs.* THE HONORABLE JAMES R. KIRKLAND, Judge of the United States District Court for the District of Columbia. *In re:* Investigation of World Arrangements with relation to the Production, Transportation, Refining and Distribution of Petroleum in Possible Violation of Title 15 U. S. Code, Sections 1-23.	Misc. No. 233.

MOTION FOR LEAVE TO FILE PETITION FOR WRIT OF MANDAMUS OR OTHER APPROPRIATE WRIT TO THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF COLUMBIA.

Petitioners herein today filed with this Honorable Court a Petition for Writ of Certiorari to the United States Court of Appeals for the District Columbia Circuit under 28 U. S. C. Section 1254(1), to review an order of said Court of Appeals granting a Petition for leave to File a Petition for Writ of Mandamus or other appropriate writ to the United States District Court for the District of Columbia and denying the Petition for Writ of Mandamus.

In the event said Petition for Certiorari is denied as an inappropriate method of reviewing the action of either or both courts below, Petitioners hereby file this Motion for Leave to File with this Honorable Court the said Petition as a Petition for Writ of Mandamus or other Appropriate Writ to the District Court of the United States for the District of Columbia.

Jurisdiction to Review.

The jurisdiction of this Court is invoked under Section 1651(a) of Title 28, United States Code. The following decisions sustain the power and jurisdiction of this Court to review the order of the District Court:

United States v. *National City Lines*, 337 U. S. 78 (1949);
Ex Parte Collett, 337 U. S. 55 (1949);
Kilpatrick v. *Texas & Pacific Ry. Co.*, 337 U. S. 75 (1949);
Ex Parte Peru, 318 U. S. 578 (1943);
U. S. Alkali Export Association, Inc. v. *United States*, 325 U. S. 196 (1945);
De Beers Consolidated Mines Ltd. v. *United States*, 325 U. S. 212 (1945).

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Dated: October 29, 1952.

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